

AN ACT

To amend sections 1337.13, 1337.17, 2133.05, 2133.08, 2133.09, and 2133.12 of the Revised Code to provide that an individual's statutory priority to decide whether or not to withhold or withdraw life-sustaining treatment for the individual's relative is forfeited if the individual is the subject of a temporary protection order or civil protection order and the relative is the alleged victim or if the individual and the relative are married and the parties to a divorce, dissolution, legal separation, or annulment proceeding, to void any objections to a living will made by a person whose statutory priority would be so forfeited, and to provide that an attorney in fact under a durable power of attorney for health care is competent to make decisions pertaining to life-sustaining treatment, nutrition, or hydration, only if the attorney in fact is not subject to a temporary protection order or civil protection order in which the principal is the alleged victim.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1337.13, 1337.17, 2133.05, 2133.08, 2133.09, and 2133.12 of the Revised Code be amended to read as follows:

Sec. 1337.13. (A)(1) An attorney in fact under a durable power of attorney for health care shall make health care decisions for the principal only if the instrument substantially complies with section 1337.12 of the Revised Code and specifically authorizes the attorney in fact to make health care decisions for the principal, and only if the attending physician of the principal determines that the principal has lost the capacity to make informed health care decisions for the principal. If authorized in the instrument, the attorney in fact, commencing immediately upon the execution of the instrument or at any subsequent time specified in the instrument and regardless of whether the principal has lost the capacity to make informed health care decisions, may obtain information concerning the principal's health, including protected health information as defined in 45 C.F.R. 160.103. Except as otherwise provided in divisions (B) to (F) of this section and subject to any specific limitations in the instrument, the attorney in fact may make health care decisions for the principal to the same extent as the principal could make those decisions for the principal if the principal had the capacity to do so. Except as otherwise provided in divisions (B) to (F) of this section, in exercising that authority, the attorney in fact shall act consistently with the desires of the principal or, if the desires of the principal are unknown, shall act in the best interest of the principal.

(2) This section does not affect, and shall not be construed as affecting, any right that the person designated as attorney in fact in a durable power of attorney for health care may have, apart from the instrument, to make or participate in the making of health care decisions on behalf of the

principal.

(3) Unless the right is limited in a durable power of attorney for health care, when acting pursuant to the instrument, the attorney in fact has the same right as the principal to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

(B)(1) An attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to life-sustaining treatment, unless the principal is in a terminal condition or in a permanently unconscious state and unless the applicable requirements of divisions (B)(2) and (3) of this section are satisfied.

(2) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a permanently unconscious state, the consulting physician associated with the determination that the principal is in the permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine and surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine and surgery or osteopathic medicine and surgery, is qualified to determine whether the principal is in a permanently unconscious state.

(3) In order for an attorney in fact to refuse or withdraw informed consent to life-sustaining treatment for a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal shall determine, in good faith, ~~to both of the following:~~

(a) To a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;

(b) That the attorney in fact is competent to make such a decision under division (H) of this section.

(C) Except as otherwise provided in this division, an attorney in fact under a durable power of attorney for health care does not have authority, on behalf of the principal, to refuse or withdraw informed consent to health care necessary to provide comfort care. This division does not preclude, and shall not be construed as precluding, an attorney in fact under a durable power of attorney for health care from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal if, under the circumstances described in division (E) of this section, the attorney in fact would not be prohibited from refusing or withdrawing informed consent to the provision of nutrition or hydration to the principal.

(D) An attorney in fact under a durable power of attorney for health care does not have authority to refuse or withdraw informed consent to health care for a principal who is pregnant if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to the life of the principal, or unless the principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

(E) An attorney in fact under a durable power of attorney for health care does not have

authority to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal, unless the principal is in a terminal condition or in a permanently unconscious state and unless the following apply:

(1) The principal's attending physician and at least one other physician who has examined the principal determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.

(2) If the principal is in a permanently unconscious state, the principal has authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when the principal is in a permanently unconscious state by doing both of the following in the durable power of attorney for health care:

(a) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to the principal if the principal is in a permanently unconscious state and if the determination described in division (E)(1) of this section is made, or checking or otherwise marking a box or line that is adjacent to a similar statement on a printed form of a durable power of attorney for health care;

(b) Placing the principal's initials or signature underneath or adjacent to the statement, check, or other mark described in division (E)(2)(a) of this section.

(3) If the principal is in a permanently unconscious state, the principal's attending physician determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to the principal when the principal is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of this section.

(4) The principal's attending physician determines, in good faith, that the attorney in fact is competent to make such a decision under division (H) of this section.

(F) An attorney in fact under a durable power of attorney for health care does not have authority to withdraw informed consent to any health care to which the principal previously consented, unless at least one of the following applies:

(1) A change in the physical condition of the principal has significantly decreased the benefit of that health care to the principal.

(2) The health care is not, or is no longer, significantly effective in achieving the purposes for which the principal consented to its use.

(G) An attorney in fact under a durable power of attorney for health care does not have authority to make decisions pertaining to the use or continuation of life-sustaining treatment or the provision of nutrition or hydration to the principal unless the attorney in fact is competent to make those decisions under division (H) of this section.

(H) An attorney in fact is competent to make decisions under division (B), (E), or (G) of this section unless the attorney in fact is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state in which the principal is the alleged victim.

Sec. 1337.17. A printed form of durable power of attorney for health care may be sold or

otherwise distributed in this state for use by adults who are not advised by an attorney. By use of such a printed form, a principal may authorize an attorney in fact to make health care decisions on the principal's behalf, but the printed form shall not be used as an instrument for granting authority for any other decisions. Any printed form that is sold or otherwise distributed in this state for the purpose described in this section shall include the following notice:

"Notice to Adult Executing This Document

This is an important legal document. Before executing this document, you should know these facts:

This document gives the person you designate (the attorney in fact) the power to make most* health care decisions for you if you lose the capacity to make informed health care decisions for yourself. This power is effective only when your attending physician determines that you have lost the capacity to make informed health care decisions for yourself and, notwithstanding this document, as long as you have the capacity to make informed health care decisions for yourself, you retain the right to make all medical and other health care decisions for yourself.

You may include specific limitations in this document on the authority of the attorney in fact to make health care decisions for you.

Subject to any specific limitations you include in this document, if your attending physician determines that you have lost the capacity to make an informed decision on a health care matter, the attorney in fact generally* will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the attorney in fact to make health care decisions for you generally* will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

However*, even if the attorney in fact has general authority to make health care decisions for you under this document, the attorney in fact never* will be authorized to do any of the following:

(1) Refuse or withdraw informed consent to life-sustaining treatment (unless your attending physician and one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that either of the following applies:

(a) You are suffering from an irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which (i) there can be no recovery and (ii) your death is likely to occur within a relatively short time if life-sustaining treatment is not administered, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself.

(b) You are in a state of permanent unconsciousness that is characterized by you being irreversibly unaware of yourself and your environment and by a total loss of cerebral cortical functioning, resulting in you having no capacity to experience pain or suffering, and your attending physician additionally determines, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that there is no reasonable possibility that you will regain the capacity to make informed health care decisions for yourself);

(2) Refuse or withdraw informed consent to health care necessary to provide you with

comfort care (except that, if the attorney in fact is not prohibited from doing so under (4) below, the attorney in fact could refuse or withdraw informed consent to the provision of nutrition or hydration to you as described under (4) below). (You should understand that comfort care is defined in Ohio law to mean artificially or technologically administered sustenance (nutrition) or fluids (hydration) when administered to diminish your pain or discomfort, not to postpone your death, and any other medical or nursing procedure, treatment, intervention, or other measure that would be taken to diminish your pain or discomfort, not to postpone your death. Consequently, if your attending physician were to determine that a previously described medical or nursing procedure, treatment, intervention, or other measure will not or no longer will serve to provide comfort to you or alleviate your pain, then, subject to (4) below, your attorney in fact would be authorized to refuse or withdraw informed consent to the procedure, treatment, intervention, or other measure.*);

(3) Refuse or withdraw informed consent to health care for you if you are pregnant and if the refusal or withdrawal would terminate the pregnancy (unless the pregnancy or health care would pose a substantial risk to your life, or unless your attending physician and at least one other physician who examines you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive);

(4) Refuse or withdraw informed consent to the provision of artificially or technologically administered sustenance (nutrition) or fluids (hydration) to you, unless:

(a) You are in a terminal condition or in a permanently unconscious state.

(b) Your attending physician and at least one other physician who has examined you determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain.

(c) If, but only if, you are in a permanently unconscious state, you authorize the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you by doing both of the following in this document:

(i) Including a statement in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type, that the attorney in fact may refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state and if the determination that nutrition or hydration will not or no longer will serve to provide comfort to you or alleviate your pain is made, or checking or otherwise marking a box or line (if any) that is adjacent to a similar statement on this document;

(ii) Placing your initials or signature underneath or adjacent to the statement, check, or other mark previously described.

(d) Your attending physician determines, in good faith, that you authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to you if you are in a permanently unconscious state by complying with the requirements of (4)(c)(i) and (ii) above.

(5) Withdraw informed consent to any health care to which you previously consented, unless a change in your physical condition has significantly decreased the benefit of that health care to you, or unless the health care is not, or is no longer, significantly effective in achieving the purposes for which you consented to its use;

(6) Provide, refuse, or withdraw informed consent to life-sustaining treatment, or the provision of artificially or technologically administered sustenance (nutrition) or fluids (hydration) to you, if the attorney in fact is subject to a temporary protection order, civil protection order, or any other protection order in this state or another state in which you are the alleged victim.

Additionally, when exercising authority to make health care decisions for you, the attorney in fact will have to act consistently with your desires or, if your desires are unknown, to act in your best interest. You may express your desires to the attorney in fact by including them in this document or by making them known to the attorney in fact in another manner.

When acting pursuant to this document, the attorney in fact generally* will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records. You can limit that right in this document if you so choose.

Generally, you may designate any competent adult as the attorney in fact under this document. However, you cannot* designate your attending physician or the administrator of any nursing home in which you are receiving care as the attorney in fact under this document. Additionally, you cannot* designate an employee or agent of your attending physician, or an employee or agent of a health care facility at which you are being treated, as the attorney in fact under this document, unless either type of employee or agent is a competent adult and related to you by blood, marriage, or adoption, or unless either type of employee or agent is a competent adult and you and the employee or agent are members of the same religious order.

This document has no expiration date under Ohio law, but you may choose to specify a date upon which your durable power of attorney for health care generally will expire. However, if you specify an expiration date and then lack the capacity to make informed health care decisions for yourself on that date, the document and the power it grants to your attorney in fact will continue in effect until you regain the capacity to make informed health care decisions for yourself.

You have the right to revoke the designation of the attorney in fact and the right to revoke this entire document at any time and in any manner. Any such revocation generally will be effective when you express your intention to make the revocation. However, if you made your attending physician aware of this document, any such revocation will be effective only when you communicate it to your attending physician, or when a witness to the revocation or other health care personnel to whom the revocation is communicated by such a witness communicate it to your attending physician.

If you execute this document and create a valid durable power of attorney for health care with it, it will revoke any prior, valid durable power of attorney for health care that you created, unless you indicate otherwise in this document.

This document is not valid as a durable power of attorney for health care unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when you sign or acknowledge your signature. No person who is related to you by blood, marriage, or adoption may be a witness. The attorney in fact, your attending physician, and the administrator of any nursing home in which you are receiving care also are ineligible to be witnesses.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you."

In the preceding notice, the single words, and the two sentences in the second set of

parentheses in paragraph (2), followed by an asterisk and all of paragraph (4) shall appear in the printed form in capital letters or other conspicuous type, including, but not limited to, a different font, bigger type, or boldface type.

Sec. 2133.05. (A) If the attending physician of a declarant and one other physician who examines the declarant determine that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, if the attending physician additionally determines that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment for the declarant and that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions for the declarant, and if the attending physician is aware of the existence of the declarant's declaration, then the attending physician shall do all of the following:

(1) Record the determinations, together with the terms of the declaration or any copy of the declaration acquired as described in division (C) of section 2133.02 of the Revised Code, in the declarant's medical record;

(2)(a) Make a good faith effort, and use reasonable diligence, to notify either of the following of the determinations:

(i) If the declarant designated in the declarant's declaration one or more persons to be notified at any time that life-sustaining treatment would be withheld or withdrawn pursuant to the declaration, that person or those persons;

(ii) If division (A)(2)(a)(i) of this section is not applicable, the appropriate individual or individuals, in accordance with the following descending order of priority: if any, the guardian of the declarant, but this division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the declarant; the declarant's spouse; the declarant's adult children who are available within a reasonable period of time for consultation with the declarant's attending physician; the declarant's parents; or an adult sibling of the declarant or, if there is more than one adult sibling, a majority of the declarant's adult siblings who are available within a reasonable period of time for the consultation.

(b) The attending physician shall record in the declarant's medical record the names of the individual or individuals notified pursuant to division (A)(2)(a) of this section and the manner of notification.

(c) If, despite making a good faith effort, and despite using reasonable diligence, to notify the appropriate individual or individuals described in division (A)(2)(a) of this section, the attending physician cannot notify the individual or individuals of the determinations because the individual or individuals are deceased, cannot be located, or cannot be notified for some other reason, then the requirements of divisions (A)(2)(a) and (b) and (3) of this section and, except as provided in division (B)(1)(b) of this section, the provisions of division (B) of this section shall not apply in connection with the declarant and the declarant's declaration. However, the attending physician shall record in the declarant's medical record information pertaining to the reason for the failure to provide the requisite notices and information pertaining to the nature of the good faith effort and reasonable diligence used.

(3) Afford time for the individual or individuals notified in accordance with division (A)(2) of this section to object in the manner described in division (B)(1)(a) of this section.

(B)(1)(a) Within forty-eight hours after receipt of a notice pursuant to division (A)(2) of this section, any individual so notified shall advise the attending physician of the declarant whether the individual objects on a basis specified in division (B)(2)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the individual shall file a complaint as described in division (B)(2) of this section in the probate court of the county in which the declarant is located. If the individual fails to so file a complaint or if the individual would not be competent to decide whether or not to consent to the withholding or withdrawing of life-sustaining treatment for any of the reasons described in division (C)(2) of section 2133.08 of the Revised Code, the individual's objections as described in division (B)(2)(c) of this section shall be considered to be void.

(b) Within forty-eight hours after a person described in division (A)(2)(a)(i) of this section or a priority individual or any member of a priority class of individuals described in division (A)(2)(a)(ii) of this section receives a notice pursuant to division (A)(2) of this section or within forty-eight hours after information pertaining to an unnotified person described in division (A)(2)(a)(i) of this section or an unnotified priority individual or unnotified priority class of individuals described in division (A)(2)(a)(ii) of this section is recorded in a declarant's medical record pursuant to division (A)(2)(c) of this section, either of the following shall advise the attending physician of the declarant whether there is an objection on a basis specified in division (B)(2)(c) of this section:

(i) If a person described in division (A)(2)(a)(i) of this section was notified pursuant to division (A)(2) of this section or was the subject of a recordation under division (A)(2)(c) of this section, then the objection shall be communicated by the individual or a majority of the individuals in either of the first two classes of individuals that pertain to the declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of this section.

(ii) If an individual or individuals in the descending order of priority set forth in division (A)(2)(a)(ii) of this section were notified pursuant to division (A)(2) of this section or were the subject of a recordation under division (A)(2)(c) of this section, then the objection shall be communicated by the individual or a majority of the individuals in the next class of individuals that pertains to the declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of this section.

If an objection as described in division (B)(2)(c) of this section is communicated to the attending physician in accordance with division (B)(1)(b)(i) or (ii) of this section, then, within two business days after the communication, the objecting individual or majority shall file a complaint as described in division (B)(2) of this section in the probate court of the county in which the declarant is located. If the objecting individual or majority fails to file a complaint or if the individual or a member of the majority would not be competent to decide whether or not to consent to the withholding or withdrawing of life-sustaining treatment for any of the reasons described in division (C)(2) of section 2133.08 of the Revised Code, the objections as described in division (B)(2)(c) of this section shall be considered to be void.

(2) A complaint of an individual that is filed in accordance with division (B)(1)(a) of this section or of an individual or majority of individuals that is filed in accordance with division (B)(1)(b) of this section shall satisfy all of the following:

- (a) Name any health care facility in which the declarant is confined;
- (b) Name the declarant, the declarant's attending physician, and the consulting physician

associated with the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;

(c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:

(i) To the attending physician's and consulting physician's determinations that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;

(ii) To the attending physician's determination that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment;

(iii) To the attending physician's determination that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment;

(iv) That the course of action proposed to be undertaken by the attending physician is not authorized by the declarant's declaration;

(v) That the declaration was executed when the declarant was not of sound mind or was under or subject to duress, fraud, or undue influence;

(vi) That the declaration otherwise does not substantially comply with this chapter.

(d) Request the probate court to issue one of the following types of orders:

(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, the determination that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment, the determination that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions, or the course of action proposed to be undertaken;

(ii) An order invalidating the declaration because it was executed when the declarant was not of sound mind or was under or subject to duress, fraud, or undue influence, or because it otherwise does not substantially comply with this chapter;

(e) Be accompanied by an affidavit of the plaintiff or plaintiffs that includes averments relative to whether the plaintiff is an individual or the plaintiffs are individuals as described in division (A)(2)(a)(i) or (ii) of this section and to the factual basis for the plaintiff's or the plaintiffs' objections;

(f) Name any individuals who were notified by the attending physician in accordance with division (A)(2)(a) of this section and who are not joining in the complaint as plaintiffs;

(g) Name, in the caption of the complaint, as defendants the attending physician of the declarant, the consulting physician associated with the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration, any health care facility in which the declarant is confined, and any individuals who were notified by the attending physician in accordance with division (A)(2)(a) of this section and who are not joining in the complaint as plaintiffs.

(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than an objecting individual as described in division (B)(1)(a) of this section, other than an objecting individual or majority of individuals as described in division (B)(2)(b)(i) or (ii) of this section, and other than persons described in division (B)(2)(g) of this

section are prohibited from commencing a civil action under this section and from joining or being joined as parties to an action commenced under this section, including joining by way of intervention.

(4)(a) A probate court in which a complaint as described in division (B)(2) of this section is filed within the period specified in division (B)(1)(a) or (b) of this section shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after the service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether a requested order will be issued.

(b) If the declarant's declaration authorized the use or continuation of life-sustaining treatment should the declarant be in a terminal condition or in a permanently unconscious state and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the declarant as described in division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.

(c) If the declarant's declaration authorized the withholding or withdrawal of life-sustaining treatment should the declarant be in a terminal condition or in a permanently unconscious state and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the declarant as described in division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.

(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (B)(2)(d)(ii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.

(e) If the court issues a reevaluation order to the declarant's attending physician pursuant to division (B)(4)(b) or (c) of this section, then the attending physician shall make the requisite reevaluation. If, after doing so, the attending physician again determines that the declarant is in a terminal condition or in a permanently unconscious state, that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment, that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions, or that the attending physician would undertake the same proposed course of action, then the attending physician shall notify the court in writing of the determination and comply with the provisions of section 2133.10 of the Revised Code.

Sec. 2133.08. (A)(1) If written consent to the withholding or withdrawal of life-sustaining treatment, witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of section 2133.02 of the Revised Code, is given by the appropriate individual or individuals as specified in division (B) of this section to the attending physician of a patient who is

an adult, and if all of the following apply in connection with the patient, then, subject to section 2133.09 of the Revised Code, the patient's attending physician may withhold or withdraw the life-sustaining treatment:

(a) The attending physician and one other physician who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient is in a terminal condition or the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state, and the attending physician additionally determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment and that there is no reasonable possibility that the patient will regain the capacity to make those informed decisions.

(b) The patient does not have a declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a durable power of attorney for health care, or has a document that purports to be such a declaration or durable power of attorney for health care but that document is not legally effective.

(c) The consent of the appropriate individual or individuals is given after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(d) The appropriate individual or individuals who give a consent are of sound mind and voluntarily give the consent.

(e) If a consent would be given under division (B)(3) of this section, the attending physician made a good faith effort, and used reasonable diligence, to notify the patient's adult children who are available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(2) The consulting physician under division (A)(1)(a) of this section associated with a patient allegedly in a permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine or surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine or surgery or osteopathic medicine and surgery, is qualified to determine whether the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.

(B) For purposes of division (A) of this section and subject to division (C) of this section, a consent to withhold or withdraw life-sustaining treatment may be given by the appropriate individual or individuals, in accordance with the following descending order of priority:

(1) If any, the guardian of the patient. This division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the patient.

(2) The patient's spouse;

(3) An adult child of the patient or, if there is more than one adult child, a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician;

(4) The patient's parents;

(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the patient's adult siblings who are available within a reasonable period of time for that consultation;

(6) The nearest adult who is not described in divisions (B)(1) to (5) of this section, who is related to the patient by blood or adoption, and who is available within a reasonable period of time for that consultation.

(C)(1) If an appropriate individual or class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is not available within a reasonable period of time for the consultation and competent to so decide, or declines to so decide, then the next priority individual or class of individuals specified in that division is authorized to make the decision. However, an equal division in a priority class of individuals under that division does not authorize the next class of individuals specified in that division to make the decision. If an equal division in a priority class of individuals under that division occurs, no written consent to the withholding or withdrawal of life-sustaining treatment from the patient can be given pursuant to this section.

(2)(a) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawing of life-sustaining treatment for a patient and that patient are married and are the parties to a pending divorce, dissolution, legal separation, or annulment proceeding, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make the decision.

(b) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawing of life-sustaining treatment for a patient is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state and the patient is the alleged victim, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make that decision.

(c) If a member of a class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state and the patient is the alleged victim, the member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.

(d) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient has been charged with the offense of felonious assault under section 2903.11 of the Revised Code or the offense of aggravated assault under section 2903.12 of the Revised Code against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make the decision.

(e) If a member of a class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient has been charged with the offense of felonious assault under section 2903.11 of the Revised Code or the offense of aggravated assault under section 2903.12 of the Revised Code against the patient and

the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, that member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.

(D)(1) A decision to consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient shall be made in good faith.

(2) Except as provided in division (D)(4) of this section, if the patient previously expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, a consent given pursuant to this section shall be valid only if it is consistent with that previously expressed intention.

(3) Except as provided in division (D)(4) of this section, if the patient did not previously express an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, a consent given pursuant to this section shall be valid only if it is consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, as inferred from the lifestyle and character of the patient, and from any other evidence of the desires of the patient, prior to the patient's becoming no longer able to make informed decisions regarding the administration of life-sustaining treatment. The Rules of Evidence shall not be binding for purposes of this division.

(4)(a) The attending physician of the patient, and other health care personnel acting under the direction of the attending physician, who do not have actual knowledge of a previously expressed intention as described in division (D)(2) of this section or who do not have actual knowledge that the patient would have made a different type of informed consent decision under the circumstances described in division (D)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (E) of this section.

(b) The immunity conferred by division (C)(1) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient under division (B) of this section if the individual gives the consent in good faith and without actual knowledge, at the time of giving the consent, of either a contrary previously expressed intention of the patient, or a previously expressed intention of the patient, as described in division (D)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.

(E)(1) Within forty-eight hours after a priority individual or class of individuals gives a consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and communicates the consent to the patient's attending physician, any individual described in divisions (B)(1) to (5) of this section, except an individual who is not

competent to give consent under division (C)(2) of this section, who objects to the application of this section to the patient shall advise the attending physician of the grounds for the objection. If an objection is so communicated to the attending physician, then, within two business days after that communication, the objecting individual shall file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician associated with the determination that the patient is in a terminal condition or that the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state, in the probate court of the county in which the patient is located for the issuance of an order reversing the consent of the priority individual or class of individuals. If the objecting individual fails to so file a complaint, the individual's objections shall be considered to be void.

A probate court in which a complaint is filed in accordance with this division shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after the service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether the decision of the priority individual or class of individuals to consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with the patient will be confirmed or reversed.

(2) If the decision of the priority individual or class of individuals was to consent to the use or continuation of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:

(a) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.

(b) The patient has a legally effective declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.

(c) The decision to use or continue life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.

(d) The decision to use or continue life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as described in division (D)(3) of this section.

(e) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(f) The priority individual, or any member of the priority class of individuals, who made the decision to use or continue life-sustaining treatment was not of sound mind or did not voluntarily make the decision.

(g) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(h) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with this section.

(3) If the decision of the priority individual or class of individuals was to consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:

(a) The patient is not in a terminal condition, the patient is not in a permanently unconscious state, or the patient has not been in a permanently unconscious state for at least the immediately preceding twelve months.

(b) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.

(c) There is a reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

(d) The patient has a legally effective declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.

(e) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.

(f) The decision to withhold or withdraw life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as described in division (D)(3) of this section.

(g) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(h) The priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not of sound mind, was not competent to make the decision under division (C)(2) of this section, or did not voluntarily make the decision.

(i) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable

diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(j) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with this section.

(4) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in divisions (B)(1) to (5) of this section are prohibited from filing a complaint under division (E) of this section and from joining or being joined as parties to a hearing conducted under division (E) of this section, including joining by way of intervention.

(F) A valid consent given in accordance with this section supersedes any general consent to treatment form signed by or on behalf of the patient prior to, upon, or after the patient's admission to a health care facility to the extent there is a conflict between the consent and the form.

(G) Life-sustaining treatment shall not be withheld or withdrawn from a patient pursuant to a consent given in accordance with this section if the patient is pregnant and if the withholding or withdrawal of the treatment would terminate the pregnancy, unless the patient's attending physician and one other physician who has examined the patient determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

(H) As used in this section, "civil protection order" and "temporary protection order" have the same meanings as in section 2923.124 of the Revised Code.

Sec. 2133.09. (A) The attending physician of a patient who is an adult and who currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state may withhold or withdraw nutrition and hydration in connection with the patient only if all of the following apply:

(1) Written consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient has been given by an appropriate individual or individuals in accordance with section 2133.08 of the Revised Code, and divisions (A)(1)(a) to (e) and (2) of that section have been satisfied.

(2) A probate court has not reversed the consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient pursuant to division (E) of section 2133.08 of the Revised Code.

(3) The attending physician of the patient and one other physician as described in division (A)(2) of section 2133.08 of the Revised Code who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.

(4) Written consent to the withholding or withdrawal of nutrition and hydration in connection with the patient, witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of section 2133.02 of the Revised Code, is given to the attending physician of the patient by an appropriate individual or individuals as specified in division (B) of section 2133.08 of the Revised Code.

(5) The written consent to the withholding or withdrawal of the nutrition and hydration in connection with the patient is given in accordance with division (B) of this section.

(6) The probate court of the county in which the patient is located issues an order to withhold or withdraw the nutrition and hydration in connection with the patient pursuant to division (C) of this section.

(B)(1) A decision to consent pursuant to this section to the withholding or withdrawal of nutrition and hydration in connection with a patient shall be made in good faith.

(2) Except as provided in division (B)(4) of this section, if the patient previously expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, a consent given pursuant to this section shall be valid only if it is consistent with that previously expressed intention.

(3) Except as provided in division (B)(4) of this section, if the patient did not previously express an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, a consent given pursuant to this section shall be valid only if it is consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, as inferred from the lifestyle and character of the patient, and from any other evidence of the desires of the patient, prior to the patient's becoming no longer able to make informed decisions regarding the administration of nutrition and hydration. The Rules of Evidence shall not be binding for purposes of this division.

(4)(a) The attending physician of the patient, and other health care personnel acting under the direction of the attending physician, who do not have actual knowledge of a previously expressed intention as described in division (B)(2) of this section or who do not have actual knowledge that the patient would have made a different type of informed consent decision under the circumstances described in division (B)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (C) of this section.

(b) The immunity conferred by division (C)(2) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient under division (A)(4) of this section if the individual gives the consent in good faith and without actual knowledge, at the time of giving the consent, of either a contrary previously expressed intention of the patient, or a previously expressed intention of the patient, as described in division (B)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.

(C)(1) Prior to the withholding or withdrawal of nutrition and hydration in connection with a patient pursuant to this section, the priority individual or class of individuals that consented to the withholding or withdrawal of the nutrition and hydration shall apply to the probate court of the county in which the patient is located for the issuance of an order that authorizes the attending physician of the patient to commence the withholding or withdrawal of the nutrition and hydration in

connection with the patient. Upon the filing of the application, the clerk of the probate court shall schedule a hearing on it and cause a copy of it and a notice of the hearing to be served in accordance with the Rules of Civil Procedure upon the applicant, the attending physician, the consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient, and the individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who are not applicants, which service shall be made, if possible, within three days after the filing of the application. The hearing shall be conducted at the earliest possible time, but no sooner than the thirtieth business day, and no later than the sixtieth business day, after the service has been completed.

At the hearing, any individual described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who is not an applicant, except an individual who is not competent under division (C)(2) of section 2133.08 of the Revised Code, and who disagrees with the decision of the priority individual or class of individuals to consent to the withholding or withdrawal of nutrition and hydration in connection with the patient shall be permitted to testify and present evidence relative to the use or continuation of nutrition and hydration in connection with the patient. Immediately following the hearing, the court shall enter on its journal its determination whether the requested order will be issued.

(2) The court shall issue an order that authorizes the patient's attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the patient only if the applicants establish, by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, all of the following:

(a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.

(b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment.

(c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

(d) The conditions specified in divisions (A)(1) to (4) of this section have been satisfied.

(e) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient as described in division (B)(2) of this section or is consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration as described in division (B)(3) of this section.

(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in division (A)(4) of this section or in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician and consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including joining by way of intervention.

(D) A valid consent given in accordance with this section supersedes any general consent to treatment form signed by or on behalf of the patient prior to, upon, or after the patient's admission to a health care facility to the extent there is a conflict between the consent and the form.

Sec. 2133.12. (A) The death of a qualified patient or other patient resulting from the withholding or withdrawal of life-sustaining treatment in accordance with sections 2133.01 to 2133.15 of the Revised Code does not constitute for any purpose a suicide, aggravated murder, murder, or any other homicide offense.

(B)(1) The execution of a declaration shall not do either of the following:

(a) Affect the sale, procurement, issuance, or renewal of any policy of life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary;

(b) Be deemed to modify or invalidate the terms of any policy of life insurance or annuity that is in effect on October 10, 1991.

(2) Notwithstanding any term of a policy of life insurance or annuity to the contrary, the withholding or withdrawal of life-sustaining treatment from an insured, qualified patient or other patient in accordance with sections 2133.01 to 2133.15 of the Revised Code shall not impair or invalidate any policy of life insurance or annuity.

(3) Notwithstanding any term of a policy or plan to the contrary, the use or continuation, or the withholding or withdrawal, of life-sustaining treatment from an insured, qualified patient or other patient in accordance with sections 2133.01 to 2133.15 of the Revised Code shall not impair or invalidate any policy of health insurance or any health care benefit plan.

(4) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, health insuring corporation, other health care plan, legal entity that is self-insured and provides benefits to its employees or members, or other person shall require any individual to execute or refrain from executing a declaration, or shall require an individual to revoke or refrain from revoking a declaration, as a condition of being insured or of receiving health care benefits or services.

(C)(1) Sections 2133.01 to 2133.15 of the Revised Code do not create any presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if the individual should be in a terminal condition or in a permanently unconscious state at any time.

(2) Sections 2133.01 to 2133.15 of the Revised Code do not affect the right of a qualified patient or other patient to make informed decisions regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment as long as the qualified patient or other patient is able to make those decisions.

(3) Sections 2133.01 to 2133.15 of the Revised Code do not require a physician, other health care personnel, or a health care facility to take action that is contrary to reasonable medical standards.

(4) Sections 2133.01 to 2133.15 of the Revised Code and, if applicable, a declaration do not affect or limit the authority of a physician or a health care facility to provide or not to provide life-sustaining treatment to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D) Nothing in sections 2133.01 to 2133.15 of the Revised Code condones, authorizes, or approves of mercy killing, assisted suicide, or euthanasia.

(E)(1) Sections 2133.01 to 2133.15 of the Revised Code do not affect the responsibility of the attending physician of a qualified patient or other patient, or other health care personnel acting under the direction of the patient's attending physician, to provide comfort care to the patient. Nothing in sections 2133.01 to 2133.15 of the Revised Code precludes the attending physician of a qualified patient or other patient who carries out the responsibility to provide comfort care to the patient in good faith and while acting within the scope of the attending physician's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, prescribing, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the qualified patient's or other patient's pain or discomfort and not for the purpose of postponing or causing the qualified patient's or other patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death. Nothing in sections 2133.01 to 2133.15 of the Revised Code precludes health care personnel acting under the direction of the patient's attending physician who carry out the responsibility to provide comfort care to the patient in good faith and while acting within the scope of their authority from dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the qualified patient's or other patient's pain or discomfort and not for the purpose of postponing or causing the qualified patient's or other patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death.

(2)(a) If, at any time, a person described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code or the individual or a majority of the individuals in either of the first two classes of individuals that pertain to a declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of section 2133.05 of the Revised Code believes in good faith that both of the following circumstances apply, the person or the individual or majority of individuals in either of the first two classes of individuals may commence an action in the probate court of the county in which a declarant who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (E)(1) of this section:

(i) Comfort care is not being used or continued in connection with the declarant.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

(b) If a declarant did not designate in the declarant's declaration a person as described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code and if, at any time, a priority individual or any member of a priority class of individuals under division (A)(2)(a)(ii) of section 2133.05 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the declarant in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next

class of individuals that pertains to the declarant may commence an action in the probate court of the county in which a declarant who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (E)(1) of this section:

(i) Comfort care is not being used or continued in connection with the declarant.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

(c) If, at any time, a priority individual or any member of a priority class of individuals under division (B) of section 2133.08 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the patient in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the patient may commence an action in the probate court of the county in which a patient as described in division (A) of section 2133.08 of the Revised Code is located for the issuance of an order mandating the use or continuation of comfort care in connection with the patient in a manner that is consistent with division (E)(1) of this section, unless the individual is not competent under division (C)(2) of section 2133.08 of the Revised Code:

(i) Comfort care is not being used or continued in connection with the patient.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

SECTION 2. That existing sections 1337.13, 1337.17, 2133.05, 2133.08, 2133.09, and 2133.12 of the Revised Code are hereby repealed.

SECTION 3. Section 2133.12 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 354 and Am. Sub. S.B. 66 of the 122nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____